CONDOMINIUM AUTHORITY TRIBUNAL

DATE: April 25, 2025
CASE: 2024-00648R
Citation: Chai v. Toronto Standard Condominium Corporation No. 2431, 2025 ONCAT 68

Order under section 1.44 of the *Condominium Act, 1998.*

Member: Nicole Aylwin, Member

The Applicant,
Somkith Chai
Self-Represented

The Respondent,
Toronto Standard Condominium Corporation No. 2431
Represented by Sam Ojha, Agent

Hearing: Written Online Hearing – January 29, 2025, to April 11, 2025

REASONS FOR DECISION

A. INTRODUCTION

[1] The Applicant, Somkith Chai, is a unit owner of the Respondent, Toronto Standard Condominium Corporation No. 2431 ("the Respondent"). This case addresses a single request for records made by the Applicant, in which he requested several core records. According to the Applicant, the Respondent has refused him the records requested without a reasonable excuse. He asks the Tribunal to impose the maximum penalty of $5000 on the Respondent and pay him costs in the amount of $200.

[2] The Respondent takes the position that this application is frivolous and vexatious. It argues that a change in the condominium management company led to the delay in providing records, but that the Respondent has now received all the records to which he is entitled. Nonetheless, according to the Respondent, the Applicant is using the records request process to frustrate and stymie the corporation so that it makes mistakes that the Applicant can then hold it accountable for at this Tribunal.

[3] While there is only one records request at issue in this case, and very narrow issues to be decided, the underlying conflict between these parties is long-standing and incredibly unproductive. This is the seventh time these parties have been before this Tribunal to address fundamentally the same issues related to records. Despite previous warnings from the Tribunal that both parties needed to examine their approaches, they appear here again, and both parties bear some responsibility for the fact that relatively straightforward records issues continue to end up before this Tribunal.

[4] Published Tribunal decisions and orders related to these parties demonstrate that the Respondent continues to fail to respond to records requests in accordance with the provisions of the *Condominium Act, 1998* ("the Act") and provide records to which the Applicant is entitled[1]. These are basic responsibilities under the Act. Such findings are reaffirmed in this decision.

[5] However, the evidence and submissions in this case also affirm the conclusions drawn in previous Tribunal decisions that the Applicant continues to attempt to use records requests and this Tribunal, inappropriately, to address his dissatisfaction the Respondent's board of directors and their governance practices. He also continues to prolong the conflict by attempting to bring actions with respect to issues already determined, attempting to have the Tribunal indirectly enforce previous orders of this Tribunal, and 'rolling-forward' issues previously raised. His actions are coming perilously close the definition of vexatious.

[6] For the reasons set out below, I find the Respondent has refused to provide the Applicant records and has no reasonable excuse for the refusal. However, I exercise my discretion and do not impose a penalty in this case. Rather, I order that the Respondent deliver a copy of this decision to every unit owner using their address of service as listed in the record of owners and mortgagees kept in accordance with s. 46.1 of the Act. Along with the decision, the Respondent will provide a letter signed by all the directors of the board, which explains why owners have been sent a copy of this decision (i.e. they were ordered to by this Tribunal). I award no costs to any party.

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[1] *Chai v. Toronto Standard Condominium Corporation No. 2431*, 2019 ONCAT 45; *Chai v. Toronto Standard Condominium Corporation No. 2431*, 2022 ONCAT 142; *Chai v. Toronto Standard Condominium Corporation No. 2431*, 2023 ONCAT 14; *Chai v. Toronto Standard Condominium Corporation No. 2431*, 2024 ONCAT 161; *Chai v. Toronto Standard Condominium Corporation No. 2431*, 2021 ONCAT 116.

[7] As noted, this case is narrow in its scope and while I have reviewed all the evidence and submissions provided to me, I refer only to that which is directly relevant and necessary for this decision and I address only those issues properly before me, which are:

1. Has the Respondent refused to provide records to the Applicant without a reasonable excuse?

2. If so, is a penalty warranted under s. 1.44 (1) 6 of the Act?

3. Should either party be ordered to pay costs?

B. ISSUES & ANALYSIS

Issue No. 1: Has the Respondent refused to provide records to the Applicant without a reasonable excuse?

[8] On June 28, 2024, the Applicant used the mandated Records Request form to request the following records:

1. Record of Owners and Mortgagees;

2. Record of Notices Related to Leases under s. 83 of the Act;

3. Periodic Information Certificates ("PICs") for the 12-months preceding the date of the request;

4. Budget for the current fiscal year;

5. Most recent approved financial statements;

6. Most recent auditors report; and

7. Minutes of board meetings for the 12 months preceding the date of the request.

[9] The Respondent does not dispute the Applicant's entitlement to these records. However, the request was not responded to in accordance with s. 13.3 (6) of Ontario Regulation 48/01 ("O. Reg 48/01"), nor were the records provided within the timeframe set out in s. 13.4 (1) of O. Reg 48/01, which specifies that core-records must be provided within 30 days of the receipt of the request if delivered electronically.

[10] The Applicant is now in possession of the requested records. The most recent

approved financial statements and the budget for the current fiscal year were provided as part of the Annual General Meeting ("AGM") package circulated to owners in November 2024 and many of the remaining records were provided to the Applicant at the start of this hearing. Upon receiving the bulk of the records, the Applicant sought to immediately introduce issues of adequacy. He was advised by me that this would not be allowed, as this was not an issue identified in his application. Nonetheless, as demonstrated below, the Applicant sought to pursue such arguments in indirect ways. I have addressed such arguments only insofar as they relate to the issue in front of me of whether a record was refused without a reasonable excuse.

[11] The Applicant takes the position that the failure to provide the records in accordance with the timelines set out in the Act constitutes a refusal without a reasonable excuse. He further argues that several of the records he was provided with should be deemed to have been 'refused' as their content is not adequate. He asks the Tribunal to order that the records be corrected and provided to him.

[12] The Respondent submits that the failure to fulfill the request in a 'timely manner' was the result of a transition in condominium management providers. In his sworn statement the president of the board, Nathan Clarke, testified that:

> The Board of Directors had reviewed this request and instructed management provider at that time Percel Inc to proceed with fulfilling it in accordance with the requirements of the Condominium Act. The previous property management company, Percel Inc., did not follow through on the Board's directive in a timely manner. As a result, the delay in providing the requested records was caused by the management company's inaction rather than any refusal or negligence on the part of the Board.

[13] First, I will address the general delay in producing the records and then I will address the Applicant's arguments pertaining to individual records, his arguments that some records remain outstanding, and his request for orders that they be produced.

<u>General delay in providing records</u>

[14] Mr. Clarke's testimony shows an inexcusable lack of understanding regarding the responsibilities of the board of directors to meet its obligations under the Act, particularly given previous orders of this Tribunal that the board (re)take training offered by the Condominium Authority of Ontario to refresh its knowledge of its responsibilities related to records. The ultimate responsibility to provide records in accordance with the Act lies with the board of directors who act on behalf of the corporation. A board cannot abdicate its responsibility to meet timelines and other

requirements of the Act to individual condominium managers and/or condominium management companies. Even if, as Mr. Clarke suggests, the board gave clear direction to the condominium manager at the time of the request, given the lengthy history of records disputes between the parties, it would have behooved the board to follow up with and ensure the condominium manager carried out their duties in respect to this request in a timely manner. They did not do so. As result I find that while the Respondent may not have outright refused to provide the records, the Respondent's failure to be aware of and meet its obligations to provide records to which the Applicant was entitled amounts to a refusal without a reasonable excuse.

Have all the records requested been provided? Should any orders be made regarding the production of records?

[15] As noted, this is the seventh case between the parties. In those previous cases, the Applicant made fundamentally the same arguments regarding the same types of requested records. As was explained to the Applicant – the Tribunal will not 're-litigate' or decide issues or address records that have been the subject of previous cases. As there appeared to be some overlap between the records and issues raised in this case and previous cases, I asked the Applicant to address any duplicate requests in his submissions and explain why the Tribunal should address any such duplications. Where relevant, I address any such issues as they arise in relation to the individual records as set out below.

Record of Owner of Mortgagees the Record of Notices Relating to Leases under s. 83 of the Act

[16] I address the Record of Owners of Mortgagees and the Record of Notices Relating to Leases Under s. 83 of the Act together as the Applicant's arguments pertaining to them are similar. On February 2, 2025, the Respondent provided the Applicant with these two records. The Applicant argues that the content of these records does not contain sufficient detail and are not in the proper format as required by the Act and thus should be considered as having not been delivered. He notes that the format of these records does "not match the format" as described in a previous Tribunal decision between these parties and argued that the format of the record does not match the format the Respondent agreed to in a previous settlement agreement between the parties. He asks me to order that these records be recreated using specific data and order them to be redelivered to him current to either the date of June 28, 2024, or the date of this decision. I decline to make such an order for two reasons.

[17] First, the Applicant has received the two records requested, He may not be

satisfied with the content of the records; however the records have been provided to him, and I do not find in this case their content or lack thereof renders them 'refused'. Whether these records meet a format agreed to in a settlement between the parties is not for me to determine.

[18] Second, in October 2024, when the Tribunal issued its most recent decision in a dispute between the parties*, Chai v. Toronto Standard Condominium Corporation No. 2431,* 2024 ONCAT 161 ("Chai 2024"), this Tribunal ordered that the Applicant be provided with "updated and current copies" of these records. The Applicant's pursuit in this case of an additional order to produce these records as updated either to the date of June 28, 2024, or the current date, calls into question the Applicant's purpose in requesting such an order – given that he is already in receipt of an order that would have provided him with a record current to a date later than his June 28, 2024 request.

[19] I make no order regarding these two records.

Periodic Information Certificates for the past 12 months

[20] The Applicant submits that when he made his request for the PICs for the period between June 28, 2023 – June 28, 2024, he was expecting to receive a PIC dated November 30, 2023, and May 31, 2024, as these were the two dates that align with the end of the first and third quarters of the Respondent's fiscal year.

[21] Prior to the start of this hearing, the Applicant was already in possession of a PIC dated October 2023. He has been in possession of this PIC since it was distributed with the AGM package in the fall of 2023. On February 9, 2025, the Respondent provided the Applicant with a single PIC dated August 31, 2024. Neither of these PICs appear to align with the first or third quarter of the Respondent's fiscal year.

[22] Here, the Applicant would have me find that the Respondent has refused to provide records without a reasonable excuse as it does not have PICs which properly accord with the requirements of s. 26.3 of the Act and s. 11.1 (1) 1. and 2. of O. Reg 48/01 which provides that a Periodic Information Certificate must be sent to owners within 60 days of the conclusion of the first quarter of the corporation's fiscal year, with the other to be sent within 60 days of the conclusion of the third quarter. He submits that for several years the Respondent and/or management has failed to deliver its PICs in accordance with the Act – often delivering PICs that are 'out of scope' for the fiscal quarters that ought to be reported on and that "[m]anagement change has shown no improvement in compliance". In this regard, the Applicant once again attempts to pursue an issue that he has already had addressed by the Tribunal.

[23] I find the evidence demonstrates that the Applicant has received the two PICs that the Respondent has generated for the period requested and that there are no other PICs to provide. Are these PICs technically compliant with the Act and Regulations? Likely not, but this cannot be a surprise to either party given that the Applicant pursued an identical issue in his last application to this Tribunal (see Chai 2024) which dealt with a request for PICs.

[24] A PIC provides a snapshot of a corporation's financial and governance information at a particular period. Ordering the Respondent to create PICs accurate to the retroactive dates of May 2024 and November 2023, particularly when a PIC dated October 2023 has already been provided, is unnecessary at this point. However, going forward the Respondent ought to exercise diligence by generating the PICs in accordance with the requirements of the Act and Regulations.

Budget for the current fiscal year, most recent auditors report and most recent approved financial statements

[25] Both parties agree the budget for the current fiscal year, most recent auditor's report and most recent approved financial statements were provided as part of the Annual General Meeting Package in November of 2024. The Applicant indicates that, as he has them, he is no longer seeking delivery of these documents.

Minutes of Meetings for the period of June 28, 2023 – June 28, 2024

[26] The parties agree that the requested minutes were provided to the Applicant on February 2, 2025. As with the Record of Owners and Mortgagees and the Record of Notices Relating to Leases under s. 83 of the Act, the Applicant, having received these records, took issue with their content, arguing that the Respondent has failed to properly redact these records insofar as the minutes contain unredacted details related to individual units. He asserts this failure amounts to a failure to deliver records to which he is entitled. He has asked that I order the Respondent to re-provide these records with proper redactions.

[27] I note that the Applicant has already received an order from this Tribunal compelling the Respondent to produce some of these minutes. In the Chai 2024 decision, the Tribunal order that the Respondent "provide, if not already provided", copies of both "in-camera" or "private" board meeting minutes dates of June 21, 2022, and August 7, 2023, and copies of all non-private or non-in-camera minutes of board meetings occurring between the dates of June 21, 2022, and August 7, 2023. If the Applicant feels that the Respondent has not complied with that order, he is well aware of the appropriate recourse, which is not to request the Tribunal make another order in relation to records already addressed, but to pursue

enforcement of a Tribunal order at the Superior Court of Justice. Thus, I do not address minutes that fall within this period.

[28] Regarding the records for the period between August 7, 2023, and June 2024, I have reviewed the minutes within this period submitted as evidence by the Applicant. He is correct that in two instances the minutes contain reference to specific units that ought to be redacted.

[29] However, as has been noted in previous decisions of the Tribunal generally, and in decisions involving these parties in particular, the standard to which corporations are held is not perfection. In this case, failing to redact two references to other unit owners, does not render this record 'undelivered'. Nor does the failure to provide an accompanying statement explaining redactions, for the obvious reason that no redactions were made and thus no accompanying statement was necessary.

[30] Moreover, even if as the Applicant suggests, the other minutes he received contained information which ought to have been redacted, I do not find in this case a remedy is necessary. The Applicant has already seen the unredacted version of the minutes, such that ordering that a redacted version be provided to him at this point serves no purpose. The Applicant's request for such an order, at this point, appears to be more punitive in nature than based on any actual need for the accompanying statement or redacted records.

[31] That said, given that more than one Tribunal decision between these parties has clearly addressed the obligations of the Respondent to redact records in accordance with the Act and provide the required accompanying statement, the Respondent should be aware of its responsibilities in this regard. While there is little excuse for the Applicant to have brought this issue before the Tribunal again, such waste of the Tribunal's resources would not have occurred at all if the Respondent would be more conscientious in the fulfillment of its statutory duties.

Issue No. 2: Should a penalty be imposed under s. 1.44 (1) 6 of the Act?

[32] Under s. 1.44 (1) 6 of the Act, the Tribunal may make an order directing a condominium corporation

> ... to pay a penalty that the Tribunal considers appropriate to the person entitled to examine or obtain copies under section 55(3) if the Tribunal considers that the corporation has without reasonable excuse refused to permit the person to examine or obtain copies under that subsection.

[33] Under s. 1.44 (3) of the Act, the Tribunal has authority to award a penalty of up to $5000. The Applicant has requested that the maximum penalty be awarded in this

case as he believes the Respondent willfully disregarded its responsibilities to provide records under the Act, has a pattern of escalating non-compliance with the Act, and to hold the "response accountable for its past action".

[34] The Applicant referred me to such cases as: *Balasubramaniam v. Metropolitan Toronto Condominium Corporation No. 812,* 2023 ONCAT 152 and *Emerald PG Holdings Ltd. v. Toronto Standard Condominium Corporation No. 2519*, 2023 ONCAT 188 as well as other Tribunal cases between himself and the Respondent in which various penalties have already been imposed[2]. At several points the Applicant pointed to the fact that the Respondent had not, in his opinion, complied with past orders of the Tribunal as evidence that the maximum penalty ought to be awarded.

[35] The Respondent argues that a penalty is not appropriate as they faced "operational and transitional challenges" when they switched management providers, which resulted in the delay. They assert that the Applicant has now been provided with all the requested records and that the Applicant's pursuit of such a large penalty and his repeated pursuit of similar claims and records is now being done to frustrate and stymie the board, rather than out of any need for the records or the information contained with them.

[36] The imposition of a penalty by the Tribunal is discretionary. As noted in previous Tribunal decisions, not every refusal, even those without any excuse, will give rise to a penalty. Whether or not a penalty is appropriate will depend on the facts in each case.

[37] I have reviewed the cases cited by the Applicant in support of his submissions that the Respondent has willfully disregarded its responsibilities under the Act; however, the evidence in this case is very different than the cases to which I was referred. Given the unique facts in this case, I do not find a penalty is likely to serve the purposes for which it is intended.

[38] In prior Tribunal cases, it has been noted that one of the purposes of the penalty is to impress upon condominium corporations the seriousness of their obligations to comply with the provisions of the Act and to provide unit owners with a remedy when those obligations are not met. At this point, the Respondent ought to be more than aware of its responsibilities under the Act regarding records. It has been

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[2] See *Chai v. Toronto Standard Condominium Corporation No. 2431*, 2019 ONCAT 45, where a $200 penalty was awarded; *Chai v. Toronto Standard Condominium Corporation No. 2431*, 2022 ONCAT 142, where a $750 penalty was awarded.

ordered on several occasions to comply with the various provisions in the Act pertaining to redactions, timelines, entitlement, etc. relating to records. The Respondent's board of directors has also been ordered to take or retake training on its duties and obligations pertaining to the Act and has already paid the Applicant a total of $950 in penalties. There is no reason to believe awarding a higher penalty, the cost of which would be borne by all of the owners in the condominium and not solely its board, is likely to alter the behaviour of the Respondent's board members, who continue to wrongly assume that their management is solely responsible for ensuring the condominium's compliance with the Act.

[39] Moreover, the Applicant himself bears some responsibility in creating an unproductive dynamic between the parties that has contributed to these records not being provided in a timely way. The facts of this case demonstrate that what may have begun as a legitimate dispute over records, has appeared to morph into an attempt by the Applicant to use the records request process to 'catch' the board in an error, even the most minute of errors – in order to hold them to a standard of perfection in relation to a number of relatively minor matters, satisfying his own interests, rather than helping to ensure his condominium is operating properly on substantial governance matters.

[40] This is not the first time the Tribunal has made such an observation. In Chai 2024, the Tribunal noted:

> I caution Mr. Chai that while his intention may be to hold his board to account, that does not mean that every slight departure from his strict reading of their obligations equates to poor governance. And further, filing repeated applications with the Tribunal to prove a point – that the board is lax, at times haphazard, and uninformed about their obligations – is not a good use of Tribunal resources and, more importantly, ceases to be a meaningful endeavour.

[41] Rather than helping to resolve the conflict between the parties, imposing a $5000 penalty in this case is more likely than not to encourage the Applicant to continue to use this Tribunal and the records request process to penalize the board for what the Applicant views as poor governance practices (which is not the purpose of a penalty) and to reward him substantially for it at the expense of other unit owners. If the Applicant feels that the board is not governing the corporation effectively – there are other more appropriate means and venues for addressing such concerns.

[42] For all the reasons above, I decline to award a penalty.

[43] However, while I do not find a monetary penalty is appropriate in this case, the Respondent has not met its obligation to provide records in accordance with the Act. I find another remedy to be more appropriate in these circumstances. Under s. 1.44 (1) 7 of the Act, the Tribunal may make an order directing whatever other relief the Tribunal considers fair in the circumstances.

[44] The Respondent seems to continue to be either willfully negligent or incapable of meeting obligations to provide records in accordance with the Act. It is important for owners to be aware and understand how the Respondent is failing to meet its responsibilities and the consequences of such. Notwithstanding the part the Applicant plays, it is also largely the Respondent's continued failures that have resulted in multiple Tribunal proceedings and the imposition of various penalties (including as noted some monetary penalties that are ultimately borne by all unit owners). Thus, I find it appropriate that all owners be made aware of this Tribunal's findings and I am ordering the Respondent, within 30 days of the date of this decision, to deliver a copy of this decision to all owners of the corporation at the address of service that is listed for each owner in the record of owners and mortgagees kept in accordance with s. 46.1 of the Act. Accompanying the decision is to be a letter that indicates that the Respondent has been found to have failed to meet their obligations under that Act regarding several provisions related to records and records requests and thus have been ordered to send a copy of the Tribunal's decision to all owners. The letter is to contain no other text or commentary on the decision or the situation. The letter is to be signed by all members of the board of directors.

[45] To ensure compliance I will also order the Respondent to provide the Applicant with a letter indicating it has delivered the decision to all owners in accordance with the order made by this Tribunal. This letter is to be provided to the Applicant no later than 7 days after the Respondent completes the delivery to all unit owners.

Issue No. 3: Should an award of costs be made?

[46] The Applicant has requested costs in the amount of $200 to cover his Tribunal filing fees. The Respondent has not requested costs.

[47] Section 1.44 (1) 4 of the Act states that the Tribunal may make "an order directing another party to the proceeding to pay the costs of another party to the proceeding."

[48] Section 1.44 (2) of the Act states that an order for costs "shall be determined ...in accordance with the rules of the Tribunal".

[49] The cost-related rules of the Tribunal's Rules of Practice relevant to this case are:

> 48.1 If a Case is not resolved by Settlement Agreement or Consent Order and a CAT Member makes a final Decision, the unsuccessful Party will be required to pay the successful Party's CAT fees unless the CAT member decides otherwise.
>
> 48.2 The CAT generally will not order one Party to reimburse another Party for legal fees or disbursements ("costs") incurred in the course of the proceeding. However, where appropriate, the CAT may order a Party to pay to another Party all or part of their costs, including costs that were directly related to a Party's behaviour that was unreasonable, undertaken for an improper purpose, or that caused a delay or additional expense.

[50] Cost awards are discretionary. While the Applicant was successful in his claim that a delay in producing the records amounted to a refusal, as noted throughout this decision, beyond this claim, the Applicant sought to use this process to roll-forward previously determined issues, and in some cases address records which were subject to previous orders. This is not an appropriate use of Tribunal resources. Also, despite several warnings that it is inappropriate to use claims regarding records to pursue governance issues at the Tribunal, the Applicant did so. All of which lend some weight to the Respondent's arguments that the Applicant is using this process for an improper purpose, and weigh against awarding costs to the Applicant. Thus, in this case I am exercising my discretion and declining to award the Applicant costs.

C. ORDER

[51] The Tribunal Orders that:

1. Under s. 1.44 (1) 7, within 30 days of the date of this decision, the Respondent must deliver a copy of this decision to all unit owners at the address of service that is listed in the record of owners and mortgagees as kept in accordance with s. 46.1 of the Act. Accompanying the decision is to be a letter that indicates that the Respondent has been ordered to send the enclosed Tribunal decision to all parties as it has been found to have failed to meet its obligations under that Act regarding several provisions related to records and records requests. The letter is to contain no other text or commentary on the decision or the situation. The accompanying letter is to be signed by all members of the board of directors.

2. The Respondent will provide the Applicant with a letter indicating it has delivered the decision to all owners. This letter is to be provided to the

Applicant no later than 7 days after the Respondent completes delivery to all unit owners.

Nicole Aylwin
Member, Condominium Authority Tribunal

Released on: April 25, 2025